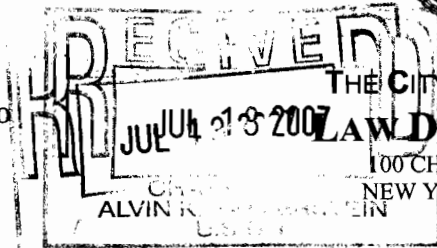


MICHAEL A. CARDOZO  
Corporation Counsel



THE CITY OF NEW YORK  
LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NY 10007

Barry K. Myrvold  
Special Federal Litigation  
(212) 788-9391  
(212) 788-9776 (fax)  
bmyrvold@law.nyc.gov

July 12, 2007

*Time to respond  
is enlarged to  
September 14, 2007*

**By U.S. Mail**

Honorable Alvin K. Hellerstein  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1050  
New York, New York 10007

*RMB 7/16/07*

*Richard A. Baerman  
U.S. District Judge*

Re: Michelle Fracasso and Jonathon Spitzer v. The City of New York, et al.,  
07 CV 4649 (AKH)

Your Honor:

I am an attorney in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for the defendant City of New York in this action. I am writing to respectfully request an extension of time from July 16, 2007 to September 14, 2007, to respond to the complaint on behalf of the City of New York.<sup>1</sup> Counsel for the plaintiffs, Craig Lanza, Esq., consents to this application for an extension.

There are several reasons for seeking this sixty-day extension of time to respond to the complaint. In accordance with this office's obligations under Rule 11 of the Federal Rules of Civil Procedure, we need time to investigate the allegations of the complaint. Here, it is alleged that on March 4, 2006, plaintiffs were falsely arrested, and that plaintiff Fracasso was also maliciously prosecuted and subjected to excessive force by the individually-named

<sup>1</sup> There is no indication whether the individually-named defendant identified in the caption as Police Officer Edelman-Winstead has been served with the summons and complaint in this action. As of this date, no request for representation has been received with respect to him, nor does the docket sheet indicate service on him. Without appearing on his behalf, the City respectfully requests that, if he has been served, the same extension be granted to him in order to ensure that his defenses are not jeopardized while representation issues are being decided.

Honorable Judge Alvin K. Hellerstein  
Michelle Fracasso and Jonathan Spitzer v. NYC, et al.  
July 12, 2007  
Page 2

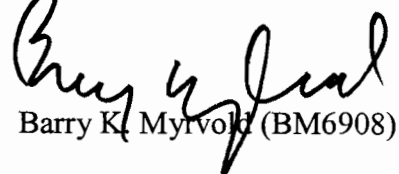
defendant. The charges against plaintiff Fracasso were allegedly dismissed. Currently, this office is in the process of forwarding to plaintiffs' counsel for execution a consent and authorization for the release of records that may have been sealed pursuant to N. Y. Criminal Procedure Law § 160.50. The executed release is necessary for this office to obtain the District Attorney, Criminal Court and police records pertaining to the plaintiffs' alleged false arrest, and Fracasso's alleged malicious prosecution. This office is also in the process of forwarding to plaintiffs' counsel for execution medical releases, which are necessary for our office to obtain the medical records pertaining to plaintiff Fracasso's alleged physical injuries and treatment.

Further, the sixty-day extension is necessary to allow time for this office to determine, pursuant to N.Y. General Municipal Law § 50-k and based on a review of the facts of the case, whether we may represent the individual police officer defendant. *See Mercurio v. The City of New York, et al.*, 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting *Williams v. City of New York, et al.*, 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)).

Accordingly, we respectfully request that the City's time to respond to the complaint be extended until September 14, 2007. No previous request for an extension of time to respond to the complaint has been made in this action.

I thank the Court for its time and consideration of this request.

Respectfully submitted,

  
Barry K. Myrvold (BM6908)

cc: Craig S. Lanza, Esq.  
Balestriere, PLLC  
*Attorneys for Plaintiffs*

By U.S. Mail